

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

RANDY VINCENT MOORE,

Petitioner,

v.

STATE OF OREGON,

Respondent.

No. 6:20-cv-00641-AC

OPINION AND ORDER

MOSMAN, J.,

On November 17, 2020, Magistrate Judge John V. Acosta issued his Findings and Recommendation (F. & R.) [ECF 11]. Judge Acosta recommended that I deny the Petition for Writ of Habeas Corpus [ECF 1] and decline to issue a certificate of appealability. Petitioner Randy Vincent Moore filed objections as to the in-custody requirement for habeas relief and as to the statute of limitations, arguing equitable tolling should apply despite the untimely petition. Upon review, I agree with Judge Acosta's findings on the in-custody requirement and thus do not reach the statute of limitations issue. I DISMISS this case with prejudice.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to

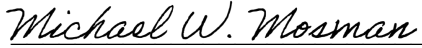
make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F. & R. to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F. & R. depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F. & R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

Upon review, I agree with Judge Acosta's findings and recommendation on the in-custody requirement and I ADOPT the F. & R. [ECF 11] as to that issue as my own opinion. I thus find I do not need to reach the statute of limitations issue, including the potential applicability of equitable tolling, and decline to adopt the F. & R. as to that issue. I DENY Mr. Moore's Petition for Writ of Habeas Corpus [ECF 1] and decline to issue a certificate of appealability because Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). The case is DISMISSED with prejudice.

IT IS SO ORDERED.

DATED this 19th day of January, 2021.


MICHAEL W. MOSMAN
United States District Judge